IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEDNESDAY THE NINTH DAY OF JANUARY
TWO THOUSAND AND NINETEEN

PRESENT

THE HON`BLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.P.No.20494 of 2001
in
S.A.No.1947 of 2001

Kaliamurthy .. Petitioner/ Petitioner

vs

1.Ramasami Sembirayar
2.Dhanalakhmi
3.Devaki .. Respondents / Respondents

Petition praying that in the circumstances stated therein and the affidavit filed therewith, the High Court will be pleased to appoint an Advocate commissioner to inspect “c” schedule property subject matter of OS.NO.240 of 90 on the file of the District Munsif's Court ,Panruti, note down the physical features as well as its access to the road from the Petition's property.

Order : This petition coming on for hearing on this day and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.SUBRAMANIAN, Advocate for the petitioner and MR.R.SUNILKUMAR for the Respondents the court made the following order:-

This application had been filed about 17 years ago, at the time when the Second Appeal was filed seeking appointment of an Advocate Commissioner to inspect the suit schedule which was the subject matter in O.S.No.240 of 1990 on the file of the District Munsif Court, Panruti and to note down physical features as well as the access/availability of access to the road from the property of the petitioner/Kaliamoorthy.

2.When the Second Appeal came up for admission, an order of interim injunction was granted in C.M.P.No.20493 of 2001. There was a further noting made that the present application is dismissed, however, giving liberty to revive the same if deemed necessary. Subsequently, the present application had been restored by order dated 27.11.2018 in C.M.P.No.17858 of 2018.

3.In the affidavit filed in support of this application, the second plaintiff Kaliamoorthi who was the appellant in this Court, had stated that even pending O.S.No.240 of 1990 before the District Munsif Court, Panruti, I.A.No.2479 of 1990 had been filed seeking appointment of an Advocate Commissioner to inspect the suit property and file a report regarding its physical features. It was stated that though the application was allowed, the Commissioner actually never executed the warrant and never inspected the property and did not file any report. Thereafter, since the suit became ripe for trial, the parties were invited to let in evidence and thereafter, judgment was pronounced.

4. In the First Appellate Court in A.S.No.121 of 1996, again I.A.No.159 of 1999 was filed seeking appointment of an Advocate Commissioner. However, holding that since the application for appointment of the Commissioner was closed in the Trial Court, the First Appellate Court also closed the application.

5. It is thus seen that both the Courts below did not have the advantage of an officer of the Court, inspecting the suit property and providing the details relating to the physical features of property and also more importantly relating to accessibility or otherwise to the road from the property.

6.It is under these circumstances, that the learned counsel for the appellant insisted that at this stage, the Court should accede to the request for an appointment of an Advocate Commissioner.

7.The Second Appeal had been admitted on 23.01.2002 on the following substantial questions of law:

> "Whether in law the courts below did not err grievously in overlooking that the first respondent after having admitted as DW1 to the appellant using the "C" schedule road as the only approach to his property, was estopped from raising objections to the decree being passed?"

8.A perusal of the substantial question of law reveals that it also surrounds determination of the fact whether the appellant is using the C-schedule road to access his property as given in the plaint in the original suit and whether that was the only approach road to the property. Naturally, answering the substantial question of law

involves an analysis of the facts and that would be complete, only when the Court has the assistance of the report and rough sketch of an Advocate Commissioner, who is after all an officer of the Court.

9.In view of these reasons, I hold that an Advocate Commissioner can be appointed. However, he should take the assistance of the Surveyor from the Tashildar office and he should also give notice to both the sides and in their presence and also in the presence of their counsels, if any who volunteer to be present during inspection, he should note down the physical features and submit a report also particularly with respect to accessibility to the road from the petitioner's/plaintiff's/appellant's property.

10.The Commissioner is to follow due procedure and submit a report along with a rough sketch. The Surveyor may also provide an additional sketch prepared by him noting down physical features and also accessibility to the road from the property of petitioner's/plaintiff's/appellant's.

11.In this connection, the name of Mr.V.Srinivasan, Advocate, from Panruti has been suggested to be appointed as Advocate Commissioner. Since no objection has been raised, Mr.V.Srinivasan, Advocate, Enrl.No.484/1986, member of the Panruti Bar is appointed as Advocate Commissioner to discharge the tasks set out in the warrant as required in C.M.P.No.20494 of 2001 and as stipulated above. The Advocate Commissioner is to take the assistance of a Surveyor and also issue notice to all the parties concerned in the suit and thereafter, inspect the property and file a report along with sketch.

12.The Registry is directed to forward a copy of this order to the District Munsif Court, Panruti, so that a warrant can be prepared in the name of Mr.V.Srinivasan, Advocate, by the said Court. The initial remuneration of the Advocate Commissioner is fixed at Rs.10,000/-. The Advocate Commissioner is granted liberty to file a memo seeking additional remuneration if deemed necessary.

13.The Registry is directed to issue a copy of this order to the District Munsif Court by 18.01.2019 and the said Court in its turn, is to prepare the warrant for the Commissioner and issue the same to him by 25.01.2019 and the Commissioner is to file a report before the District Munsif Court on or before 08.02.2019 and thereafter, the District Munsif Court, Panruti, is to forward the report and all enclosures to this Court by 15.02.2019.

12.List the matter again on 19.02.2019.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smv

1.THE SUBORDINATE JUDGE,PANRUTI.

2.THE DISTRICT MUNSIF,PANRUTI.

3. THE SECTION OFFICER,JUDICIAL SECTION,
HIGH COURT,MADRAS

C.M.P.No.20494 of 2001
in
S.A.No.1947 of 2001

A.SK(18/01/2019)